

REMARKS/ARGUMENTS

This is a reply to the Office Action dated February 24, 2009.

Status of Claims

Claims 4 and 15-22 are pending.

Claims 1-3 and 5-14 are canceled.

Claim 4 is currently amended.

Claims 15-22 are currently added.

No claim is withdrawn.

Nature of Claim Amendments

Claim 4 is editorially amended. Claims 15 and 18 are supported by claims 6 and 8 of record. Claims 16 and 17 are supported at page 5, lines 14-15 of the specification. Claims 19 and 20 are supported by claim 4 and page 4, lines 10-19 of the specification. Claims 21 and 22 are supported by claim 4 and page 6, lines 6-8 of the specification.

Interview Summary Record

The applicants acknowledge with appreciation the personal interview granted by Examiner Singh to the applicants' undersigned representative on April 1, 2009 to discuss this matter. Receipt is acknowledged of the Examiner's Interview Summary mailed May 12, 2009.

At the interview, the applicants' representative discussed proposed claim amendments, and the rejection made under 35 U.S.C. §112, first paragraph, made in the most recent Office Action. The applicants' representative also discussed the Radwanski reference of record. The Examiner indicated that additional searching may be performed after the proposed amendments are submitted. No agreement as to the allowability of any particular claim was reached at the time of the interview.

Response to 35 U.S.C. §112, First Paragraph Rejection

Claim 4 has been rejected under 35 USC § 112, first paragraph, for failing to comply with the written description requirement.

The applicants respectfully disagree that the transition terminology “consisting essentially of” requires literal support in the original specification, if that is the Patent Office’s position in this matter. The applicants do not believe that case authority would support such a position, if taken.¹

In an earnest effort to advance prosecution, claim 4 has been amended to eliminate the language of “consisting essentially of.” As amended, claim 4 is believed to set forth recitations that are neither anticipated nor obvious over the art of record, such as for the reasons discussed herein and the applicants’ previous responses.

The rejection also stated that “... there is still no chemistry claimed as to what the components/composition of the cationic or anionic components are.” The applicants kindly disagree. As explained in M.P.E.P. §2163.04:

A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant’s disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97.

¹ For example, with regard to *PPG Industries v. Guardian Industries*, 156 F.3d 1351, 1354, 48 USPQ2d 1351, 1353-54 (Fed. Cir. 1998), which is cited in M.P.E.P. § 2111.03, the applicants submit that the Court’s holding is that silence in the specification regarding whether a certain material (iron sulfide) had a material affect on the properties of a product (glass) claimed in a patent with “consisting essentially of” language, properly allowed for the court below to leave it to a jury to determine whether or not the amounts of iron sulfide in glass used by the accused product had a material effect on the basic and novel characteristics of the glass *as a factual determination*. The applicants kindly submit that the Federal Circuit’s holding in *PPG Industries* does not support the outright exclusion, as a matter of law, of “consisting essentially of” language from the claims when a specification may be silent about the materials excluded by the language. Other relevant case authorities have held that an applicant may have the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant’s invention, depending on the circumstances, but that is quite different from an outright prohibition of the transition language in question merely because the specification is silent on the excluded materials. E.g., see *In re De Lajarte*, 337 F.2d 870, 143 USPQ 256 (CCPA 1964).

The applicants respectfully submit that sufficient chemistry and structure have been recited in the present claims such that a person skilled in the art at the time the application was filed would have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed and that the present invention could be practiced without undue experimentation by a person skilled in the relevant art having benefit of the present specification and a knowledge of the state of the art.

In this respect, present claim 4 recites:

a nonwoven anti-microbial wipe comprising a fibrous nonwoven substrate coated with
a non-ionic and cationic binder mixture, and
subsequently coated with
a cationic dual quaternary ammonia anti-microbial agent.

As also recited in claim 4, these combined chemical and structural features, where the cationic dual quaternary ammonia anti-microbial agent is structurally coated on top of the separately coated non-ionic and cationic binder mixture, can interact in an unexpected manner such that the cationic dual quaternary ammonia anti-microbial agent is readily released upon being introduced to an associated water source.

The applicants also respectfully submit that the "coated" feature recitations included in claim 4 should be considered when assessing the patentability of the claim as they are capable of construction as structural limitations. A "coated" article expresses or at least inevitably implies a coated structure. As explained in M.P.E.P. §2113:

>The structure implied by the process steps should be considered when assessing the patentability of product-by-process claims over the prior art, especially where the product can only be defined by the process steps by which the product is made, or where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product. See, e.g., *In re Garner*, 412 F.2d 276, 279, 162 USPQ 221, 223 (CCPA 1979) (holding "interbonded by interfusion" to limit structure of the claimed composite and noting that terms such as "welded," "intermixed," "ground in place," "press fitted," and "etched" are capable of construction as structural limitations.)<

Therefore, the "coated" feature recitations of claim 4 should be considered when assessing the patentability of the claims. Claims 19 and 21 include similar recitations to those identified above with respect to claim 4, and thus similarly should be considered.

In view of at least the above reasons, the applicants respectfully submit that the present claims comply with the written description requirement, and this rejection should be withdrawn.

Further, the applicants respectfully submit that the present claims are also patentably distinguishable from the disclosures of Radwanski et al. and other prior art of record in view of at least the reasons set forth in the applicants' previous response of January 21, 2009 and the additional reasons discussed by the applicants' representative at the interview, which are summarized below.

As discussed by applicants' undersigned representative at the interview, the Radwanski reference has a significantly different structure and opposite objective to the present invention. The prior art illustrated by Radwanski focuses on wipe structures that provide controlled-release, multi-rinse designs (e.g., col. 4, lines 48-65). Radwanski attaches disinfectant particles or binder encapsulated disinfectant particles to tacky meltblown synthetic fibers (see col. 3, line 39 to col. 4, line 7; col. 10, lines 2-21; col. 10, line 64 to col. 11, line 2). The electrochemical concept embodied by the claimed structure (i.e., the cationic quaternary anti-microbial agent on cationic binder containing mixture on nonwoven substrate) is important to achieving a single-use, rapid release of disinfectant from the wiper, instead of a controlled release spread over multiple rinse cycles as designed for in Radwanski's structure. The applicants and Radwanski are taking opposite approaches to wipe designs such as are useful for food service and medical (hospital) cleaning applications. Further, as explained in the applicants' previous response of January 21, 2009 and at the interview, Radwanski fails to teach the coated structure and chemistry as presently claimed. Given the differences in structure and objectives, it is not reasonable to assume features of the present invention are or may be inherent to, or obvious over, the prior art wipe structures such as those of Radwanski.

The Martin reference listed on the concurrently filed Information Disclosure Statement relates to a chemical disinfectant using dual chain quaternary ammonium compounds with iodine in presoaked or moistened wipes, or as an immersion or spray solution (e.g., col. 4, lines 35-39). Among other differences, Martin has no teaching, suggestion, or prediction of an outcome for use of the formulation comprising the dual chain quaternary ammonium compound and iodine on a fibrous nonwoven substrate that has been pre-coated with a non-ionic and cationic binder mixture, such as recited in the present claims. Radwanski '355 relates to nonwoven fibrous hydraulically entangled non-elastic conformal material and a method of formation thereof.

In view of at least these reasons, the applicants respectfully submit that the present claims are not anticipated by nor obvious over Radwanski or any other prior art of record.

Reconsideration and withdrawal of this rejection is respectfully requested.

It is believed that this application is in condition for allowance, and notice of such is respectfully requested.

If the Examiner believes that a teleconference would be useful in expediting the prosecution of this application, the official is kindly invited to contact the applicants' representative of record indicated below.

Respectfully submitted,

/Ramon R. Hoch/
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